the assignees, who now interpose their claim. By agreement of the parties, all the questions are submitted to the court.

It was decided in *Fox* vs. *Adams*, 5 Maine, 245, that a general voluntary assignment *by the debtor*, for the benefit of his creditors, made in another State, will not be allowed to operate upon property in this State, so as to defeat the attachment of a creditor residing in Maine. This has been the established law of our State.

A fortiori, an assignment by the officers of the law, under a bankrupt or insolvent enactment of another State, cannot have that effect. It is now the well settled American doctrine, that an assignment, by commissioners or other officers, of a debtor's personal property, under a foreign bankrupt law, does not operate as a legal transfer of that portion which is within another jurisdiction, as against the creditor of the bankrupt, there residing, who interposes his claim. *Blake* vs. *Williams and Trustees*, 6 Pick. 306; *Story's Conflict of Laws*, § 410; *Kent's Commentaries*, 2 vol. 405; *The Watchman*, 1 Ware, 232, and *Town* vs. *Smith*, 1 Wood. & Minot, 137.

The claim of the assignees in this case cannot prevail against the attachment of the plaintiff:—the plaintiff and all the trustees being citizens of Maine.

In the Supreme Court of Louisiana.

LEVICKS, BARRET & KUEN *vs.* A. J. WALKER.

A stipulation in a contract that the property of the debtor shall be sold without appraisement, in the event of non-payment at maturity, is a pact which ought not to be recognized by a court in the decree rendered upon such contract.

The opinion of the court was delivered by

MERRICK, C. J.—This suit is brought upon a promissory note executed in Pennsylvania, wherein the maker describes himself as residing in Monticello, Carroll parish, Louisiana.

In the note, the defendant promises to pay without defalcation and "*without any relief whatever from the appraisement or valuation laws.*"

Plaintiffs claimed judgment in this form against defendant, and the same being refused, thereupon they appealed.

We think the stipulation in a contract that the property of the debtor shall be sold without appraisement in the event of non-payment at maturity, one of those pacts which ought not to be recognized by our courts in the decrees rendered upon such contracts. The law has, by express provisions, ordained the mode in which its own officers shall enforce the judgments of the courts.

Parties regulate their own conduct by their stipulations, but they cannot prescribe rules of proceeding for public officers, nor demand that the courts of justice shall depart from the usual modes of enforcing their decrees. If, before judgment, the creditor may stipulate the manner in which the same shall be executed, the principle will sanction an endless variety of modes of execution of judgments, and, indeed, the parties may waive all formalities and all delay, and may even consent that some other person than the sheriff shall sell the property of the debtor, and execute the decree of the court. And if a decree giving effect to such contract be legal, then also the sale under it would be legal, and other creditors might find themselves deprived of their common pledge without notice. In view of our complicated system of mortgages and privileges, and the restrictions upon sales where parties are in insolvent circumstances, as well as the responsibility imposed by our law on the sheriff and his sureties, we are of the opinion that such stipulations ought not to be enforced. If they be not immoral, they may be considered as affecting the rights of others and void, C. C. 11, (concurring Justices Voorhies and Duffel.)

It is therefore ordered, adjudged, and decreed, that the judgment of the lower court be affirmed, and the plaintiffs pay the costs of the appeal.

BUCHANAN, J., separate opinion, concurring—I adopt as my own the following opinion, which was prepared in this case by Mr. Justice Land, who is now absent.

The defendant is sued on his promissory note for the sum of seven hundred dollars and eighty cents, which he stipulated to pay

six months after date, to the order of the plaintiffs, without defalcation, and *without any relief whatever from appraisement or valuation laws*. There was judgment against the defendant, under which he is entitled to the *benefit of appraisement*, by the law of this State, and the plaintiffs have appealed and assigned as error the refusal of the judge to render a judgment *without* the benefit of appraisement as prayed for in their petition.

The plaintiffs are merchants, residing and carrying on business in the city of Philadelphia, at which place the note was dated, and was executed by the defendant without specifying any place of payment. It is true, as contended, that the right to the benefit of appraisement given by law to a debtor in case of the forced alienation of his property for the satisfaction of his debts, may be waived by him, and his property sold at the first offering for cash, for whatever it may bring. But the waiver in such a case must be in a more solemn and authentic form than that of a mere promissory note, otherwise the waiver would become a mere *formula* in such instruments, and the entire policy of the law thereby defeated to the injury of both debtors and creditors.

In the Supreme Court of Michigan, October Term, 1860.

EBER B. WARD *vs.* WILLIAM WARNER AND ANOTHER.[1]

1. The general nature of the action of assumpsit, considered.
2. A canal through a marsh in which a stream is lost, cut by private individuals through the land of one of them, for the purpose of affording floatage for timber and lumber through the same in connection with the stream—there being no evidence that the waters of the stream ever ran along its line, or that it was the improvement of an existing water channel—is a *private* way, and the public are not entitled to use it, unless it be dedicated to their use.
3. The owner of the land on which such canal was dug, and who appeared to have incurred the major part of the expense of making it, gave notice to other individuals, who had contributed to its repair, that they must compensate him for its use at a rate which he specified in his notice; and on their refusal, and continuing its use under a claim of right to do so, brought action in assumpsit to recover compensation for the use. *Held*, that the action could not be maintained.

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[1] We are indebted to the learned Reporter of Michigan for this case. It will be found in 8 Mich. 508, which is still in press, but will be very shortly published.—*Eds. Am. Law Reg.*